

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

November 5, 2009

A meeting of the Board of Environmental Protection was held on Thursday, November 5, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, Richard Gould, Don Guimond, P. Andrews Nixon, Sue Lessard, Matt Scott, Lissa Widoff, and Frank Woodard

**Absent:** M. Wing Goodale, Nancy Ziegler

**Staff:** Mike Mullen, Bureau of Land and Water Quality  
Mike Morse, Bureau of Land and Water Quality

**Others:** David P. Littell, Commissioner  
Nancy Macirowski, Assistant Attorney General  
Cindy Bertocci, BEP Executive Analyst  
Terry Hanson, BEP Administrative Assistant

***(Meeting adjourned at approximately 1:30 p.m.)***

The Board convened its meeting with a public hearing to receive comments on proposed rule amendments.

1. Public Hearing 9:00 a.m., Chapter 305, Permit By Rule, Section 10 Stream Crossings (Bridges, Culverts and fords) / Amendments

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**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:**

Commissioner Littell encouraged Board members to attend the December 7<sup>th</sup> Department staff day event; noting that the event recognizes the work of the agency and acknowledges individual staff members. Among those staff members being honored are Stacy Ladner and Dana Murch. Stacy is being recognized as the Manager of the Year. Stacy currently oversees the Department's RCRA licensing program. Ms. Ladner was the force behind the study related to the development of clean-up protocols for a broken compact fluorescent bulb. This year's Employee of the Year is Dana Murch who runs the Department's hydropower and dam program. Dana is responsible for licensing all projects requiring federal water quality certifications.

Climate Adaptation: The stakeholders working group addressing climate adaptation is drafting recommendations for submittal to the Legislature in February 2010.

Gas Service Stations: Commissioner Littell displayed a section of damaged Enviro-flex flexible piping that was installed at some service stations in Maine. The piping is incompatible with ethanol, which has been added to gasoline since this type of piping was first installed. The Department must enforce the law that stipulates piping and fittings must be compatible with ethanol gasoline products. DEP records show that approximately 334 gas stations are using some form of flexible piping and it remains unknown as to how many of these stations are using the Enviro-flex product. Approximately 20 stations have taken action to replace or install a protective sleeve around the piping; therefore, the Department will be sending letters to the remaining stations related to this matter. The letter will advise about future inspections and the possibility of action associated with findings of non-compliance with the retrofit/removal requirement of the Enviro-flexible piping.

Legislative:

Government Evaluation Act: The Board has submitted its self-assessment report to the Joint Standing Committee on Natural Resources. The Department anticipates submitting its report soon.

Budget: The Legislature will be looking to bridge a \$30 million dollar need for a provision from the last budget and has asked departments to provide information on dedicated accounts.

Regional Haze: Senator Goodall will sponsor a bill concerning regional visibility and haze. This bill seeks to reduce sulfur levels in home heating oil and residual oil used in industry to improve visibility and air quality.

Enforcement and Compliance Issues: The Department has submitted a bill to close loop holes in environmental regulation to address enforcement and compliance issues: (1) A permit shield provision of the water discharge laws is too general and may allow some entities to argue that they are shielded from enforcement of certain violations under other laws such as the Site Law. (2) the timber forestry exemption under NRPA will be considered for modification. Maine forestry operations in organized portions of the state are exempt from NRPA for road construction associated with a forestry operation. However, some of these areas are subsequently converted into subdivision projects with the logging roads converted to subdivision roads with no NRPA, stormwater or Site Law review. Modifications to the statute will address this gap in environmental protection.

Water Level Proceedings: The Department has submitted a bill to streamline the process associated with petitions for lake water level proceedings. The proposal would remove the requirement for mandatory Board oversight. Commissioner Littell asked Board members for their input associated with this initiative.

Overboard discharge: The Department has submitted a bill to modify the residential overboard discharge program – wastewater discharges from residences to coastal waters. One change would tighten up on financial eligibility. The program originally provided a complete public subsidy for replacement systems, which is not appropriate for very expensive homes along the coast. The change would further tighten an income test. Maine has approximately 1500 existing structures equipped with straight pipe treatment systems; some of which may be eligible for financial aid for upgrades or replacement systems. These modifications support a goal to open additional shellfish beds along the coast.

**B. COMMENTS FROM THE BEP CHAIR:** None

**C. EXECUTIVE ANALYST COMMENTS:** None

**D. BOARD CALENDAR:** Reviewed.

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** No questions.

**F. EXECUTIVE SESSION:** None

## **II CONSENT AGENDA ITEMS:**

The Board voted (8-0-0-2) on a motion to approve consent agenda items 1 and 2 as presented.

The vote was taken pursuant to 38 M.R.S. §341-D(6).

*Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard voted to support the motion. Board members M. Wing Goodale and Nancy Ziegler were absent.*

**Note:** Board member P. Andrews Nixon expressed frustration with violations by Paris Utility District of known reporting requirements and asked if a larger penalty for blatant violations would send a stronger message of no tolerance for violations such as failure to submit required reports.

*Commissioner Littell explained that the penalty for the violation is high compared with typical consent agreements involving water violations. He noted that a consent agreement is a negotiated agreement and the Department cannot unilaterally impose a higher penalty.*

1. PARIS UTILITY DISTRICT, Paris – Administrative Consent Agreement (BLWQ - Water)
2. WAYNE NELSEN, NELSEN & BROWN DEVELOPMENT GROUP, DWN ASSET MANAGEMENT, INC. and COBB FARM ESTATES, LLC, - Westbrook – Administrative Consent Agreement (BLWQ – Water)

### **III. Regular Agenda**

1. TOWN OF GEORGETOWN – DEP ORDER #13-09, MANDATORY SHORELAND ZONING ACT (appeal)

Staff: Mike Morse, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to adopt staff recommendation to a) affirm Condition 1 of Department Order #13-09 eliminating the definition of “developed area” from the town’s shoreland zoning ordinance and b) vacate Condition #2 of Department Order #13-09 which would have rezoned 14 lots from Limited Residential/Recreational to Resource Protection. The motion included language clarifying Conclusion #3 by inserting reference to Section 13A as follows:

“The Board finds that the definition of “developed areas” is inconsistent with **Section 13A** of the Guidelines...” The vote was taken pursuant to 38 M.R.S. §§ 435 to 449, 06-096 CMR Chapter 1000, State of Maine Guidelines for Municipal Shoreland Zoning Ordinances and 06-096 CMR Chapter 2, Section 24, Rules Concerning the Processing of Applications and Other Administrative Matters.

*Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, Matt Scott, P. Andrews Nixon, Lissa Widoff, and Frank Woodard, voted to support the motion. Board members M. Wing Goodale and Nancy Ziegler were absent.*